

August 4, 2005

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Sussex County Planning and Zoning
Sussex County Administration Building
2 The Circle, Room 147
Georgetown, Delaware 19947

Attn: Mr. Lawrence Lank
Director

Re: PLUS review - PLUS 2004-06-01; Dukes Property

Dear Mr. Lank

This letter is in response to comments received from the Office of State Planning dated, July 8, 2004. We have revised the plan based on these comments and our response is included for your review.

Office of State Planning Coordination - Contact: Ann Marie Townshend 739-30990

The Office of State Planning Coordination notes that this proposal is in the "Investment Level 4" area of the draft 2004 Strategies for State Policies and Spending. The State Strategies documents has been endorsed by the Cabinet Committee on State Planning Issues and is currently awaiting final approval by the Governor. This proposal is also located within the Low Density area of the Sussex County Comprehensive Plan. For these reasons, the Office of State Planning Coordination does not support the rezoning of this land from AR-1 to C-1.

It should be further noted that such a rezoning would be inconsistent with the Sussex County Comprehensive Plan. We acknowledge that the parcel is adjacent to commercially zoned land that predates the adoption of the 2003 Sussex County Comprehensive Plan; however the plan states in Table 12 that the applicable zoning district for commercial activity in the Low Density area is B-1 (Neighborhood Business District). Therefore, we would encourage the applicant to seek a zoning category that is consistent with the Sussex County Comprehensive Plan.

The Office of State Planning Coordination also supports the comment made by others at the June 23 meeting, recommending landscaping along the road frontage and at the site entrance.

The request for zoning was changed from C-1 to B-1 per the recommendations and received zoning approval on April 19, 2005 from Sussex County Council.

State Historic Preservation Office SHPO) - Contact: Anne McCleave 7395685

There are cemeteries throughout the nearby area. Please be aware of the Delaware Unmarked Human Remains Act (7Del.Code 54). If any unmarked human remains are found, please contact Faye Stocum at 302-739-5685.

We acknowledge the comment regarding human remains and will make the appropriate contact if needed.

Department of Transportation - Contact: Bill Brockenbrough 760-2109

- 1) Because the development is proposed for a Rural Area, it is inconsistent with the Strategies for State Policies and Spending. Therefore, DelDot will not participate in the cost of any road improvements needed to support this development.*
- 2) As proposed, the entrance would be offset from Danfield Drive such that left turns into one would block left turns into the other. The site plan should be rearranged to place the entrance opposite of Danfield Drive. DelDot recognizes that this change would require changes to the existing parking lot and that Danfield Drive serves only a small residential subdivision, but safety considerations would warrant this change.*
- 3) At our recommendation, Sussex County has required a traffic impact study for this rezoning. DelDot received that study in late March and they anticipate responding to Sussex County regarding the results of that study in December.*
- 4) The subject portion of Route 5 is classified as a Major Collector. DelDot's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 40 feet from the centerline on collector roads. According to DelDOT records the existing right-of-way varies between 50 to 70 feet. If that is correct, DelDot will require right-of-way dedication.*
- 5) DelDot will require that the entrance for the existing parking lot be removed, topsoiled, seeded and mulched.*
- 6) The developer's engineer should check to determine if any utilities would need to be relocated as part of this project.*
- 7) We expect to have additional comments once the entrance plans are submitted for review.*
- 8) The applicant's engineer should contact our Subdivision Manager for Sussex County, Mr. John Fiori, regarding our requirements for the design of the site entrance and any related road improvements on Route 5. Mr. Fiori may be reached at (302) 760-2260.*

We concur with the comments from DelDOT and all comments will be addressed during the entrance approval process.

Soils

According to the soil survey update, the following soils were found in the immediate vicinity of the proposed construction and grouped on the basis of drainage class:

Somewhat excessively well drained - Rosedale
Somewhat well drained - Ingleside

Rosedale is a somewhat excessively well-drained upland soil that has moderate limitations on account of its rapid permeability. Ingleside is somewhat well drained upland soil that, generally, has few limitations for development.

Although most of the soils on subject parcel are fairly well drained, they have limitations associated with rapidly permeable sandy surface and subsurface horizons. Such soils are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed. In soils containing shallow water tables or found in close proximity to water bodies, these impacts are greatly intensified.

We acknowledge the comment regarding soils and nutrients

ERES Waters

This project is located adjacent to receiving waters of Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognizing as special assets of the State, and shall be protected and/ or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 11.5 of Delaware's "Surface Water Quality Standards" (as amended August 11, 1999), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of nutrient runoff through implementation of Best Management Practices (BMPs). Best Management Practices as defined in subsection 11.5(e) of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree practicable, or where attainable, a standard requiring no discharge of pollutants.

We acknowledge this comment.

TMDLs

With the adoption of Total Maximum Daily Loads (TMDLs) as a "nutrient-runoff-mitigation strategy" for reducing nutrients in the Inland Bays Watershed, reduction of nitrogen and phosphorus loading will be mandatory. A TMDL is the maximum level of pollution allowed for a given pollutant below which a "water quality limited water body" can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are authorized under federal code, states

are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these goals will fall under the auspices of Section 11.5 of the State of Delaware's Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as "pollution control strategies."

Nutrient reductions prescribed under TMDLs are assigned on basis of water quality concerns - that is, the those regions deemed to be of greatest environmental concern will require correspondingly higher levels of nutrient reduction than those regions deemed less environmentally sensitive. In this watershed, these regions are demarcated as high and low reduction zones. The high reduction zone corresponds to the western portion of the watershed, and requires a reduction of nitrogen and phosphorus by 85 and 65 percent, respectively. The low reduction zone corresponds to the eastern portion of the watershed, and requires a reduction of nitrogen and phosphorus by 40 percent. This project is proposed within the low nutrient reduction zone.

In order for the applicant to verify compliance with TMDL mandate, a full nutrient accounting process known as nutrient budget should be prepared. The developer/consultant should contact Lyle Jones in the Department's Watershed Assessment Section for further information regarding the acceptable portocal for calculating a nutrient budget. He can be reached at 739-4590.

In recognition of the need to make further reductions in subsurface wastewater nutrient discharges (mainly nitrogen) to meet the existing TMDL mandate, the Department is currently pursuing efforts to implement more stringent onsite wastewater performance standards for all septic systems sited within the Inland Bays watershed. Although these standards are still pending development, they are expected to be codified into regulations in the near future. Therefore, until these regulations are fully promulgated, the Department strongly recommends the applicant implement the "best available technologies" (BATs) to pretreat or reduce all "end of pipe" nitrogen discharges to a level that meets or exceeds the 10 mg/l Federal drinking water standard.

We will incorporate BATS and BMPs during the design of this project

Stormwater Management

Stromwater management is an integral part of the site development infrastructure. The planning and design for stormwater management should begin early. The applicant is encouraged to contact the Sussex Conservation District as soon in the planning process as possible in order to receive their preliminary comments. Contact Jessica Watson at (302) 856-7219

We will contact the Sussex Conservation District to schedule a pre-application

Water Supply

The project information sheets state that individual on-site wells will be used to provide water for the proposed project. Our records indicate that the project is not located in an areal where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells cam be constructed and located in compliance with

all requirements of the Regulations Governing the Construction and Use of Wells A well construction permit must be obtained prior to constructing any well(s).

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operations.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Should you have any questions concerning these comments, please contact Rick Rios at (302)- 739-3665.

If dewatering is required during construction we will comply with all applicable rules and regulations.

Underground Storage Tanks

There are no LUST sites located near the proposed project. However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel in the contaminated areas.

We acknowledge this comment

State Fire Marshal's Office - Contact: Kevin McSweeney 739-3696

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. Fire Protection Water Requirements:

- Since the structures of the complex are proposed to be served by individual on-site wells (No Central Water System), set back and separation requirements will apply.*

b. Fire Protection Features:

- For commercial buildings greater than 5000 SqFt, a fire alarm signaling system*

which is monitored off-site is required.

For commercial buildings greater than 10,000 SqFt Class B (2-hour rated) fire barriers are required to subdivide buildings into areas of 10,000 SqFt. or less.

Buildings greater than 10,000 SqFt., 3-stories or more or over 35 feet, or classified as High Hazard, are required to meet fire lane markings requirements.

Accessibility:

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Indian Mission Rd. must be constructed so fire department apparatus may negotiate it.*
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.*
- Any dead end road more than 300 ft. in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 ft. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn-around.*
- If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.*

d. Gas Piping and System Information:

- Provide type of fuel proposed, and show locations of bulk containers on plan.*

e. Required Notes:

- Provide a note on the final plans submitted for review of read "All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations"*
- Proposed Use*
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units*
- Square footage of each structure (Total of all Floors)*
- National Fire Protection Association (NFPA) Construction Type*
- Maximum Height of Buildings (including number of stories)*
- Provide Road Names, even for County Roads*

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website. www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures. Contact Duane Fox at (302) 856-5298 for more information.

We acknowledge all the comments from the State Fire Marshal and will incorporate them as they apply into our site design. A preliminary meeting will be scheduled prior to submittal.

Department of Agriculture - Contact: Mark Davis 739-4811

This area is still an active and viable agricultural community. However, DDA recognizes that this area is in flux and that there is commercially zoned property adjacent to this site; Therefore, while they do not support this zoning, they will not oppose the request either.

A forested buffer is required between the proposed project and all adjacent properties in active agricultural use. In addition, a forest buffer should be maintained for those pre-existing residential properties and along all streams, wetlands, and river that border the proposed subdivision.

The developer should consider a diverse landscape plan that uses Delaware native tree and shrub species and encourages the "Right Tree for the Right Place" concept.

We acknowledge this comment

Public Service Commission - Contact: Andrea Maucher 739-4247

There is currently n CPCN on file for this area. The application notes that Tidewater will service the parcel; Tidewater must apply for a CPCN.

We acknowledge this comment.

Sussex County Planning - Contact: Richard Kautz 855-7878

The proposed zoning of C-1 is contiguous to developed, commercial zoning which precedes the current Comprehensive Plan. The property is presently zoned AR-1 and is in the Low Density Area of Sussex County. The remainder of the property is surrounded by either active farming or low density residential. The Land Use Element of the Comprehensive Plan Update, January 1, 2003, states that Neighborhood Business (B-1) is applicable in this area. While the proposed use may not be very intense, C-1 allows a wide ranging number of uses not consistent with the Plan B-1 or a defined, conditional use would be more appropriate. If approved the applicant has indicted his intent to provide a landscape buffer along Indian Mission Road when the entrance is relocated.

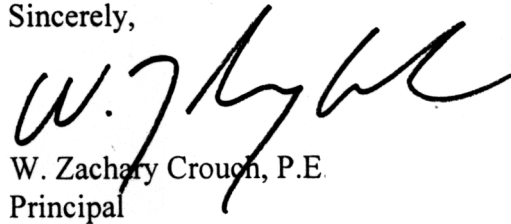
The project is in the North Coastal Planning Area, but not in a Developing Area or Environmentally Sensitive Developing Area and Sussex County does not expect to provide sewer service in the foreseeable future. Sussex County requires design and construction of the sewer collection and transmission system to meet Sussex County sewer standards and specifications. When Sussex County provides sewer service, it is required that the treatment system be abandoned and a direct connection made to the County system at the developer's expense. For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 739-3090.

We acknowledge this comment. The request for zoning was changed from C-1 to B-1 per the recommendations and received zoning approval on April 19, 2005 from Sussex County Council.

Following receipt of this letter and upon filling of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

The above responses to each comments serves as an official response from Davis, Bowen & Friedel, Inc. on behalf of our client, Mr. Harold Dukes. We thank you for your review and comments for this project. If you have any questions or concerns, please contact me at (302) 424-1441.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Zachary Crouch', is written over the printed name and title.

W. Zachary Crouch, P.E.
Principal

WZC/dnw

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Cc. Constance C. Holland, AICP, Office of State Planning
Mr. Harold Dukes, Owner